3213.

SUPREME COURT OF THE UNITED STATES.

No. 100.

THE PRESIDENT, DIRECTORS AND COMPANY OF THE UNION BANK OF TENNESSEE, APPELLANTS,

vs.

MICAJAH J. VAIDEN AND JOHN H. KEITH, ADMINISTRATORS OF WILLIAM JOLLY, DECEASED.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Subpœna and return	8	4
Answer of respondents	10	5
Exhibit No. 1, referred to in respondents' answer, being the proceedings in the probate court	16	8
Replication to answer	34	19
Transcript from probate court of Panola county	37	21
Exceptions to said transcript	41	23
Final decree	42	23
Appeal bond	42	23
Clerk's certificate	44	24
Citation and return	45	24, 25

GIDEON, printer.

Exemplification.

THE UNION BANK OF TENNESSEE
vs.
MICAJAH J. VAIDEN and JOHN H. KEITH, adm'rs of WILLIAM JOLLY, deceased.

Pleas had at a district court of the United States for the northern district of Mississippi, on the chancery side of the docket, begun and held at the town of Pontotoc, in and for said district, on the first Monday of December, A. D. 1854. Present, the honorable Samuel J. Gholson, judge of said court.

Be it remembered, that on the 2d day of December, 1851, the complainants in this case filed their original bill, in the words and figures following, to wit:

To the honorable Samuel J. Gholson, judge of the district court of the United States for the northern district of Mississippi:

The President, Directors and Company of the Union Bank of the State of Tennessee, citizens of the State of Tennessee, bring this their bill against Micajah J. Vaiden and John H. Keith, citizens of the State of Mississippi, residing in the northern district thereof; and thereupon your orators complain and say:

That on the 24th day of November, 1846, your orators instituted a suit on the law side of this honorable court, against one William Jolly, who was then a citizen of the State of Mississippi, residing in the northern district thereof, as the endorser of a bill of exchange, whereof your orators were the holders.

That process in the said suit was served upon the said Jolly, who appeared by his counsel and filed his plea to the action; that the said Jolly afterwards departed this life, intestate; and in the month of March, 1847, or about that time, the said Micajah J. Vaiden and John H. Keith were appointed by the probate court of Panola county, in the State of Mississippi, as administrators of all and singular the goods and chattels, rights and credits, which were of the said William Jolly, deceased, at the time of his death, and gave bond and were duly qualified as such administrators.

That the said suit instituted by your orators against the said Jolly, as aforesaid, was afterwards revived against the said Vaiden and Keith, as administrators as aforesaid, and the said cause came on to be tried, on the law side of this honorable court, upon the single plea of *non assumpsit*, on the 3d day of June, 1851, when your orators recovered a judgment in said cause against the said Vaiden and Keith, as administrators as aforesaid, for the sum of five thousand and forty-one dollars and thirty-three cents, besides the costs of suit; and that an execution was issued upon said judgment, returnable to the December term,

1851, of this court, which execution came to the hands of the marshal of the northern district of Mississippi, and was by him returned *Nulla bona.*

The said judgment is still wholly unpaid, and your orators are informed and believe, and charge the fact to be, that there is no visible property in the hands of the said Vaiden and Keith, as administrators as aforesaid, or in the State of Mississippi, belonging to the estate of the said Jolly, upon which a levy can be made for the satisfaction of said judgment, or any part thereof.

Your orators would further state and show unto your honor, that the said Vaiden and Keith, as administrators as aforesaid, after the said suit of your orators had been revived against them as aforesaid, and while the same was still pending and undetermined, represented to the probate court of Panola county aforesaid, about the month of April, 1848, that the estate of their said intestate was insolvent, and procured a declaration to be made by the said court of the insolvency of said estate; but your orators charge the fact to be, that the said estate is not, and has never been, insolvent; and that the assets belonging to the said estate, now in the hands of the said Vaiden and Keith, as administrators as aforesaid, are more than sufficient for the payment of all the liabilities existing against the said estate.

Your orators charge the fact to be, that the said Vaiden and Keith, as administrators as aforesaid, have converted the assets of the said estate into cash, to the amount of upwards of twenty thousand dollars; that they have fully paid off and discharged all the debts, except the said judgment of your orators, that have been legally established against the said estate, to the amount of about eleven thousand dollars; and that the said Vaiden and Keith have now in their hands, as administrators as aforesaid, upwards of nine thousand dollars in cash or other available assets belonging to the estate of the said Jolly, which is not required for the payment of any other debt of said estate, save said judgment, and refuse to apply any part thereof towards the payment of the said judgment of your orators, and will shortly proceed to pay over all the money now in their hands, as administrators as aforesaid, to the heirs at law of the said William Jolly, deceased, unless prevented by the interposition of this honorable court.

The said Vaiden and Keith falsely pretend that your orators have no legal right to require the payment of their said judgment, out of the assets of said estate now in the hands of the said Vaiden and Keith, because, as they say, your orators have never established the claim upon which their said judgment is founded, before the probate court of Panola county aforesaid, and had the same allowed by said court as a valid claim against the said estate; but your orators are advised, and accordingly insist, that they are enttiled to require from the said Vaiden and Keith, as administrators as aforesaid, the payment of the full amount of their said judgment, without any allowance thereof by the said probate court.

Your orators, therefore, in consideration of the premises, and for-

asmuch as they are without adequate remedy at law, pray that the said Micajah J. Vaiden and John H. Keith, as administrators as aforesaid, may be made parties defendants to this bill of complaint, and be compelled to answer the same upon their corporal oaths, and that, upon a hearing, your honor may decree that the said Vaiden and Keith, as administrators as aforesaid, shall pay to your orators the full amount of their said judgment, with all interest and costs legally due thereon, or for such other, further, or general relief as is suited to their case, and as to equity and good conscience may pertain.

Your orators further pray for the issuance of a subpœna directed to the said Vaiden and Keith, as administrators as aforesaid, and commanding them, under a suitable penalty to be therein named, to appear and answer the allegations of this bill; and your orators, as in duty bound, will ever pray, &c.

STEARNS, AYRS & DAVIDSON,
Solicitors for complainants.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, they are respectively required to answer; that is to say:

1st. Whether your orators did not, on the 24th day of November, 1846, institute a suit on the law side of this court against William Jolly, now deceased, as the endorser of a bill of exchange then held by your orators?

2nd. Whether the said William Jolly, at the time of the institution of said suit, was not a citizen of the State of Mississippi, and residing in the northern district thereof?

3rd. Whether process in said suit was not executed upon the said William Jolly, and whether he did not appear by counsel, and file his plea to the action?

4th. Whether the said William Jolly did not afterwards depart this life, during the pendency of this suit?

5th. Whether the defendants were not appointed by the probate court of Panola county, Mississippi, about the month of March, 1847, as administrators of all and singular the goods and chattels, rights and credits, which were of the said William Jolly, deceased, at the time of his death, and did not give bond, and qualify as such administrators?

6th. Whether the said suit was not afterwards revived in this court against the defendants, as the administrators of the said William Jolly, deceased?

7th. Whether any other plea than that of non-assumpsit was filed in the said suit; and whether the said suit was not tried in this court on the 3d day of June, 1851, and whether your orators did not then re-

cover a judgment against the defendants, as administrators of the said Jolly, in the said suit, for the sum of $5,041\frac{88}{100}$, besides the costs of suit?

8th. Whether an execution was not issued upon said judgment, and has not been returned "Nulla bona" by the marshal of the northern district of Mississippi?

9th. Whether the said judgment is not still wholly unpaid, and whether there is any visible property in the hands of the defendants, or in the State of Mississippi, belonging to the estate of said Jolly, upon which a levy can be made for the satisfaction of said judgment, or any part thereof?

10th. Whether the defendants did not, during the pendency of said suit, and about the month of April, 1848, represent to the probate court of Panola county that the estate of their said intestate was insolvent, and did not procure the said probate court to declare the said estate insolvent?

11th. Whether the defendants have not received assets belonging to the estate of their said intestate, to the amount of more than $20,000? Whether they have not paid all the debts, except the said judgment of your orators, that have established against the said estate, and whether such payments amount to more than about the sum of $11,000?

12th. Whether the defendants have not now in their hands, in cash or other available assets, belonging to the estate of their said intestate, the sum of $9,000, more or less, which is not required for the payment of any other debt of said estate, save the said judgment of your orators?

13th. Whether the defendants have not refused to pay the said judgment of your orators, and are not about to pay over all the money of said estate, in their hands, to the heirs at law of their said intestate?

NOTE.—Both the defendants are required to answer all the foregoing interrogatories, numbered from 1 to 13 inclusive.

STEARNS, AYRS & DAVIDSON,
Sol's for compl'ts.

The original subpœna in this cause was never executed or returned to this office by the marshal.

And afterwards, to wit, on the 13th day of February, 1852, was issued an alias subpœna, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to Micajah J. Vaiden and John H. Keith, administrators of William Jolly, deceased, citizens of the State of Mississippi, and of the northern district thereof, as heretofore, greeting:

For certain causes offered before us, in our district court for the northern district of Mississippi, sitting in chancery, we command you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at our district court, in and for said district,

sitting in chancery, to be held at the town of Pontotoc, on the first Monday of April next, to answer to a bill of complaint exhibited against you by the President, Directors, and Company of the Union Bank of the State of Tennessee, citizens of the State of Tennessee, complainants, in our said court; and further to do and receive what our said court shall consider in this behalf. Herein fail not, as you will answer the contrary at your peril.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States for the northern district of Mississippi, at Pontotoc, the first Monday of December, A. D. 1851, and in the 76th year of the independence of the United States.

Issued the 13th day of February, 1852.

R. W. EDMONDSON, *Clerk.*

Memorandum for Defendants.

The defendants in this case are required to enter their appearance in said case in the office of the clerk of said court, on or before the day to which the subpœna is returnable, or complainant's bill may be taken for confessed, and proceeded in ex parte.

R. W. EDMONDSON, *Clerk.*

Upon which said subpœna the marshal made the following return, to wit: John Q. Rayburn is hereby authorized to execute this writ.

Given under my hand and seal, this 25th day of February, 1852.

WM. McQUISTON, [SEAL.]
Marshal Nor. District, Mississippi.

Executed 27th February, 1852, on J. H. Keith.

WM. McQUISTON,
Marshal Northern District, Mississippi.
By J. Q. RAYBURN,
Spec'l Dep'ty Marshal.

Executed on M. J. Vaiden, 28th February, 1852.

WM. McQUISTON, *Marshal.*
By J. Q. RAYBURN,
Spec'l Dept'y Mar'l Nor. Dist. Miss.

And afterwards, to wit, on the 7th day of June, 1852, respondents filed their answer in the words and figures following, to wit:

To the honorable Samuel J. Gholson, judge of the district court of the United States for the northern district of the State of Mississippi:

The answer of Micajah J. Vaiden and John H. Keith, administrators of the estate of William Jolly, deceased, to a bill of complaint filed against them in said court, by the President, Directors, and Company of the Union Bank of Tennessee.

The respondents, saving and reserving the benefit of the usual exceptions to said bill, for answer thereto, or so much thereof as they are

cover a judgment against the defendants, as administrators of the said Jolly, in the said suit, for the sum of $5,041\frac{88}{100}$, besides the costs of suit?

8th. Whether an execution was not issued upon said judgment, and has not been returned "Nulla bona" by the marshal of the northern district of Mississippi?

9th. Whether the said judgment is not still wholly unpaid, and whether there is any visible property in the hands of the defendants, or in the State of Mississippi, belonging to the estate of said Jolly, upon which a levy can be made for the satisfaction of said judgment, or any part thereof?

10th. Whether the defendants did not, during the pendency of said suit, and about the month of April, 1848, represent to the probate court of Panola county that the estate of their said intestate was insolvent, and did not procure the said probate court to declare the said estate insolvent?

11th. Whether the defendants have not received assets belonging to the estate of their said intestate, to the amount of more than $20,000? Whether they have not paid all the debts, except the said judgment of your orators, that have established against the said estate, and whether such payments amount to more than about the sum of $11,000?

12th. Whether the defendants have not now in their hands, in cash or other available assets, belonging to the estate of their said intestate, the sum of $9,000, more or less, which is not required for the payment of any other debt of said estate, save the said judgment of your orators?

13th. Whether the defendants have not refused to pay the said judgment of your orators, and are not about to pay over all the money of said estate, in their hands, to the heirs at law of their said intestate?

NOTE.—Both the defendants are required to answer all the foregoing interrogatories, numbered from 1 to 13 inclusive.

STEARNS, AYRS & DAVIDSON,
Sol's for compl'ts.

The original subpœna in this cause was never executed or returned to this office by the marshal.

And afterwards, to wit, on the 13th day of February, 1852, was issued an alias subpœna, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to Micajah J. Vaiden and John H. Keith, administrators of William Jolly, deceased, citizens of the State of Mississippi, and of the northern district thereof, as heretofore, greeting:

For certain causes offered before us, in our district court for the northern district of Mississippi, sitting in chancery, we command you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at our district court, in and for said district,

sitting in chancery, to be held at the town of Pontotoc, on the first Monday of April next, to answer to a bill of complaint exhibited against you by the President, Directors, and Company of the Union Bank of the State of Tennessee, citizens of the State of Tennessee, complainants, in our said court; and further to do and receive what our said court shall consider in this behalf. Herein fail not, as you will answer the contrary at your peril.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States for the northern district of Mississippi, at Pontotoc, the first Monday of December, A. D. 1851, and in the 76th year of the independence of the United States.

Issued the 13th day of February, 1852.

R. W. EDMONDSON, *Clerk*.

Memorandum for Defendants.

The defendants in this case are required to enter their appearance in said case in the office of the clerk of said court, on or before the day to which the subpœna is returnable, or complainant's bill may be taken for confessed, and proceeded in ex parte.

R. W. EDMONDSON, *Clerk*.

Upon which said subpœna the marshal made the following return, to wit: John Q. Rayburn is hereby authorized to execute this writ.

Given under my hand and seal, this 25th day of February, 1852.

WM. McQUISTON, [SEAL.]
Marshal Nor. District, Mississippi.

Executed 27th February, 1852, on J. H. Keith.

WM. McQUISTON,
Marshal Northern District, Mississippi.
By J. Q. RAYBURN,
Spec'l Dep'ty Marshal.

Executed on M. J. Vaiden, 28th February, 1852.

WM. McQUISTON, *Marshal.*
By J. Q. RAYBURN,
Spec'l Dept'y Mar'l Nor. Dist. Miss.

And afterwards, to wit, on the 7th day of June, 1852, respondents filed their answer in the words and figures following, to wit:

To the honorable Samuel J. Gholson, judge of the district court of the United States for the northern district of the State of Mississippi:

The answer of Micajah J. Vaiden and John H. Keith, administrators of the estate of William Jolly, deceased, to a bill of complaint filed against them in said court, by the President, Directors, and Company of the Union Bank of Tennessee.

The respondents, saving and reserving the benefit of the usual exceptions to said bill, for answer thereto, or so much thereof as they are

advised that it is material for them to answer, answering say, that they believe it to be true that the complainants did, on the 24th of November, 1846, institute a suit on the law side of this court against their intestate, William Jolly, as the alleged endorser of a bill of exchange, then alleged to be held and owned by complainants; that the said William Jolly was at that time a citizen of the State of Mississippi, and residing in the northern district thereof; that process in said suit was duly executed upon said Jolly, who thereupon appeared by counsel, and filed his plea to the said action; that the said Jolly did afterwards depart this life during the pendency of said suit, and that thereupon respondents were appointed by the probate court of Panola county, Mississippi, as administrators of all and singular the goods and chattels, rights and credits, which were of the said William Jolly, deceased, at the time of his death, and did give bond and security, and qualify as such administrators.

That the said suit was afterwards revived in this court against respondents, as administrators of said William Jolly, deceased. That the said case came to trial on the plea of non-assumpsit on the 3d of June, 1851, when a judgment was rendered against respondents, as administrators of the said Jolly, in the said suit, for the sum of $\$5{,}041\frac{33}{100}$, besides costs of suit; on which judgment an execution issued, and has been returned by the marshal of the district aforesaid, Nulla bona.

That said judgment is still, as respondents suppose, wholly unpaid; respondents at no time having made any payment thereupon; that there is visible property in the hands of respondents, belonging to the estate of the said William Jolly, deceased, consisting of two or three old and infirm negroes, of little or no value, and as many negro children, which are worth several hundred dollars.

It is also true that respondents did, during the pendency of said suit, and about the month of April, 1848, represent or suggest to the probate court of Panola county, that the estate of their said intestate was insolvent; and that upon this suggestion, the said court did declare the said estate to be insolvent, and did order and direct that respondents, in the administration of said estate, should in all respects pursue and observe the laws in such cases made and provided by the State of Mississippi.

That respondents have received assets belonging to the estate of their said intestate, amounting to $20,000, or thereabouts, and that they have paid all the debts that have been legally established against said estate, and which by law they were authorized to pay, and such payments, including the necessary and legal expenses of such administration, amount, not to about the sum of $11,000, but to upwards of $13,000.

That respondents have not now in their hands, in cash, or in other available assets, belonging to the estate of the said intestate, the sum of $9,000, but only about the sum of $6,500.

Respondents believe, and charge the fact to be, that should complainant's debt be disallowed as against the estate of their said intestate, the

said estate will be worth to the heirs and distributees thereof only about the sum of $6,000.

It is true that respondents have refused to pay complainant's judgment in the premises, and that they expect to pay over, or make distribution of, the said estate, without the payment of the said judgment. Respondents are advised and believe, and so charge the fact to be, that the said judgment is by law barred as against the estate of their intestate, and, consequently, were they to pay it, they would do so in their own wrong.

Further answering, respondents say, that it is untrue that they did illegally or fraudulently procure the estate of their said intestate to be declared insolvent. The facts of the case are these: When respondents took charge of the said intestate, as administrators thereof, they soon ascertained that it was largely in debt. The said estate, exclusive of the lands, and including money and claims due to the estate, believed to be good or sperate and doubtful, was appraised at the sum of $18,090 76½, and debts or claims against it were brought to the notice of respondents, amounting to $18,597 40. The lands of said estate respondents knew were not very valuable, and looking to the expenses necessarily incident to the administration of the estate, and to the costs which might accrue from litigation that could not be avoided, respondents believed that said estate might prove, and probably would prove, insolvent. Under these circumstances, respondents, from a sense of duty, and with a view to their own safety, suggested the insolvency of the said estate, and procured it to be so declared by the probate court. On this declaration of insolvency, the clerk of the court was appointed, in pursuance of law, commissioner of insolvency, and publication was made for the period of twelve months, as required by law, warning all creditors of the said decedent, Jolly, to present their claims to the commissioner of insolvency for allowance. At the April term, 1849, of the probate court, the commissioner of insolvency on said estate made his report; and thereupon an order was made, requiring all persons interested to appear and except to said report at the July term, 1849, if they thought proper to do so. Of this order, due publication was made, and, at the said July term of the said probate court, respondents alone filed exceptions to the report of the said commissioner of insolvency. These exceptions were to the allowance of claims by said commissioner in favor of John Edge against said estate, for the sum of $599 63, with interest thereon, and in favor of Claiborne Buckner, for $553 96.

On hearing these exceptions, the one first mentioned was overruled, and the other was sustained, and the said claim in favor of Buckner was disallowed; and thereupon the said report of the said commissioner of insolvency was at the October term of the said probate court, 1849, approved and confirmed. And the said proceedings of the said probate court of the county of Panola, a transcript of which is herewith filed, marked Exhibit No. 1, and prayed to be taken as part of this answer, respondents now here rely upon as a bar to all relief to complainants

advised that it is material for them to answer, answering say, that they believe it to be true that the complainants did, on the 24th of November, 1846, institute a suit on the law side of this court against their intestate, William Jolly, as the alleged endorser of a bill of exchange, then alleged to be held and owned by complainants; that the said William Jolly was at that time a citizen of the State of Mississippi, and residing in the northern district thereof; that process in said suit was duly executed upon said Jolly, who thereupon appeared by counsel, and filed his plea to the said action; that the said Jolly did afterwards depart this life during the pendency of said suit, and that thereupon respondents were appointed by the probate court of Panola county, Mississippi, as administrators of all and singular the goods and chattels, rights and credits, which were of the said William Jolly, deceased, at the time of his death, and did give bond and security, and qualify as such administrators.

That the said suit was afterwards revived in this court against respondents, as administrators of said William Jolly, deceased. That the said case came to trial on the plea of non-assumpsit on the 3d of June, 1851, when a judgment was rendered against respondents, as administrators of the said Jolly, in the said suit, for the sum of $\$5,041\frac{38}{100}$, besides costs of suit; on which judgment an execution issued, and has been returned by the marshal of the district aforesaid, Nulla bona.

That said judgment is still, as respondents suppose, wholly unpaid; respondents at no time having made any payment thereupon; that there is visible property in the hands of respondents, belonging to the estate of the said William Jolly, deceased, consisting of two or three old and infirm negroes, of little or no value, and as many negro children, which are worth several hundred dollars.

It is also true that respondents did, during the pendency of said suit, and about the month of April, 1848, represent or suggest to the probate court of Panola county, that the estate of their said intestate was insolvent; and that upon this suggestion, the said court did declare the said estate to be insolvent, and did order and direct that respondents, in the administration of said estate, should in all respects pursue and observe the laws in such cases made and provided by the State of Mississippi.

That respondents have received assets belonging to the estate of their said intestate, amounting to $20,000, or thereabouts, and that they have paid all the debts that have been legally established against said estate, and which by law they were authorized to pay, and such payments, including the necessary and legal expenses of such administration, amount, not to about the sum of $11,000, but to upwards of $13,000.

That respondents have not now in their hands, in cash, or in other available assets, belonging to the estate of the said intestate, the sum of $9,000, but only about the sum of $6,500.

Respondents believe, and charge the fact to be, that should complainant's debt be disallowed as against the estate of their said intestate, the

said estate will be worth to the heirs and distributees thereof only about the sum of $6,000.

It is true that respondents have refused to pay complainant's judgment in the premises, and that they expect to pay over, or make distribution of, the said estate, without the payment of the said judgment. Respondents are advised and believe, and so charge the fact to be, that the said judgment is by law barred as against the estate of their intestate, and, consequently, were they to pay it, they would do so in their own wrong.

Further answering, respondents say, that it is untrue that they did illegally or fraudulently procure the estate of their said intestate to be declared insolvent. The facts of the case are these: When respondents took charge of the said intestate, as administrators thereof, they soon ascertained that it was largely in debt. The said estate, exclusive of the lands, and including money and claims due to the estate, believed to be good or sperate and doubtful, was appraised at the sum of $18,090 76½, and debts or claims against it were brought to the notice of respondents, amounting to $18,597 40. The lands of said estate respondents knew were not very valuable, and looking to the expenses necessarily incident to the administration of the estate, and to the costs which might accrue from litigation that could not be avoided, respondents believed that said estate might prove, and probably would prove, insolvent. Under these circumstances, respondents, from a sense of duty, and with a view to their own safety, suggested the insolvency of the said estate, and procured it to be so declared by the probate court. On this declaration of insolvency, the clerk of the court was appointed, in pursuance of law, commissioner of insolvency, and publication was made for the period of twelve months, as required by law, warning all creditors of the said decedent, Jolly, to present their claims to the commissioner of insolvency for allowance. At the April term, 1849, of the probate court, the commissioner of insolvency on said estate made his report; and thereupon an order was made, requiring all persons interested to appear and except to said report at the July term, 1849, if they thought proper to do so. Of this order, due publication was made, and, at the said July term of the said probate court, respondents alone filed exceptions to the report of the said commissioner of insolvency. These exceptions were to the allowance of claims by said commissioner in favor of John Edge against said estate, for the sum of $599 63, with interest thereon, and in favor of Claiborne Buckner, for $553 96.

On hearing these exceptions, the one first mentioned was overruled, and the other was sustained, and the said claim in favor of Buckner was disallowed; and thereupon the said report of the said commissioner of insolvency was at the October term of the said probate court, 1849, approved and confirmed. And the said proceedings of the said probate court of the county of Panola, a transcript of which is herewith filed, marked Exhibit No. 1, and prayed to be taken as part of this answer, respondents now here rely upon as a bar to all relief to complainants

in this suit, as though the same were by them now here formally pleaded.

Respondents deny that it was any part of their duty to lay before the commissioner of insolvency aforesaid the claim of the complainants, upon which suit was then pending. And if the said claim is now, as respondents believe and charge, barred as against the estate of their said intestate Jolly, it has not been owing to the default or neglect of respondents. From their first acquaintance with the facts of said claim, respondents believed it to be unjust as against the estate of their intestate; and believing this, it was their duty to resist it by all legal means, and in this duty they have never yet faltered.

Respondents deny that complainants have made out a case entitling them to relief in the premises, and that the court has jurisdiction thereof.

And now, having fully answered, respondents pray to be herein dismissed, with their costs, &c.

CLAYTON, WATSON & CRAFT,
Sol's for Respondents.

THE STATE OF MISSISSIPPI.

Before me, Hugh R. Miller, presiding judge of the seventh judicial district of the State of Mississippi, this day personally appeared Micajah J. Vaiden and John H. Keith, the respondents in the foregoing answer, and made oath, in due form of law, that the statements in said answer contained, so far as made from their own knowledge, are true; and so far as made from information derived from others, they believe them to be true.

J. H. KEITH,
M. J. VAIDEN.

Sworn to and subscribed before me, this 19th day of May, 1852.

HUGH R. MILLER, *Judge, &c.*

Exhibit No. 1 of respondents' answer is in the words and figures following, to wit:

THE STATE OF MISSISSIPPI,
Panola county.

Proceedings in the probate court of Panola county, Mississippi, in the matter of the insolvency of the estate of William Jolly, deceased.

Petition.

To the Hon. J. T. M. Burbridge, judge of probates, Panola county, Mississippi.

The petition of John H. Keith and M. J. Vaiden, administrators of the goods and chattels, rights and credits, which were of William Jolly, late of said county, deceased, shows that the estate of their intestate, both real and personal, is insufficient to pay and satisfy the debts which have been exhibited against said deceased.

By reference to an exhibit, as set forth on the opposite side of this sheet, marked Exhibit A, the amount of claims which have been presented, and otherwise came to the knowledge of your petitioners, from claimants, as per statement opposite, is $18,597 00. A portion of this indebtedness is in litigation, and another portion, your petitioners are advised, will be prosecuted for collection. Your petitioners are not advised of the justness of all the above claims; but, from the best information they can obtain, believe that the best interest of the estate require a declaration of insolvency.

Your petitioners would further show that interest is accumulating upon said debts, that a large portion is now in litigation, and that the costs and charges that may fall upon the estate will probably amount to $300 or $400; the costs and charges in the probate court is believed will amount to from $70 to $100.

Your petitioners have been forced to engage the services of counsel; and from the amount of litigation involved, they believe that $700 would be a low estimate to be expended in that way.

In addition to this, an allowance of commissions to your petitioners, &c., will be another item. The items set forth show the probable indebtedness of the estate to amount to more than $18,000. The assets of the estate will be, say, as per appraisement list, &c. - $14,743 15

The sale of the crops for 1846 and '47 will probably be some 28 or $2900 - - - - - - - - 2,900 00

$17,643 15

Amounting to near eighteen thousand dollars, leaving the item for administration out; and the probability is that more claims will be presented, &c. In addition to the assets, there is ¼ section of land lying in La Fayette county, Mississippi, which is represented to be very poor and almost valueless. The lands lying in this county are encumbered by dower—some purchase-money due upon them, and a tax title upon one piece, which would very much encumber them—so much so, that but little could be realized from the sale of them at present, &c.

Your petitioners, therefore, represent the real and personal estate of their intestate insufficient to pay intestate's debts, and pray your honor will appoint a commissioner, with power to examine all claims of the several creditors of said estate, and report the same, and make a dividend, as the law directs; and that such orders and proceedings may be had as to your honor may seem meet and proper. And as *is* in duty bound, your petitioners will ever pray, &c.

J. H. KEITH.

Sworn to and subscribed before me in open court, this 17th day of April, A. D. 1848. J. C. ARMSTRONG, *Clerk*.

Schedule of debts against the estate.

Union Bank Tennessee, probable amount, say - - $5,000 00
Sam'l Hollingsworth, La., $1,600; interest, say $200 - 1,800 00

7 suits pending in the ct. ct. this county, say - - -	$4,200 00
Judgments $1,700; J. H. Howard, Ga., $850 - -	2,500 00
Joshua Browning, La Fayette - - - - -	1,050 00
N. G. McKee, $330; Allen & Apperson, $205 - -	535 00
Dr. Coupland, $85; Dr. Davidson, $65; Mary Jolly, $50	200 00
S. B. McKee, note $50; store accs. in Oxford, $140 -	190 00
Debt due one upon land, say - - - - - -	400 00
Expense of carrying on the farm last year, say - -	300 00
Glasscock's note, $49 83; Dr. Phillips' judgment, $49 51	99 44
D. B. Cupp's acc., $215; A. G. Goodwin, do., $52 88	267 88
W. C. Culberson, acc., $7 30; A. W. Armstrong, say $30	37 30
Tax for 1846, $32 85; 1847 do., $35, say - - -	67 85
J. B. Cooke, acc., $20; Harrison & Vance for rent, $463	483 00
W. B. Fiser, acc., $5 37½; H. T. Pollard, acc., $9 37½	14 75
J. B. Acker, $2 12½; paid for rope and bagging last year about $70 - - - - - - - - -	72 12½
Dr. J. P. M. Davis, acc. $53 37½ - - - - -	53 37½
Cash paid out in N. Orleans for groceries, &c., &c., for the purpose of carrying on the farm this year - -	80 00
Cash pd. J. Kemp for taking up and posting filly - -	6 00
Paid for crying sales, and printer's fees, to date - -	15 00
Paid for repairing cotton gin - - - - - -	6 25
Note due Carter & Co., New Orleans - - - -	200 00
Acc. due H. Laird & Co., $8 06; fees, 37½ - - -	8 43½
Note due Tho. Whitson—balance, say $11 - - -	11 00
	$17,597 40½
Am't of costs and counsel fees, say - - - -	1,000 00
	$18,597 40½

In the above cases that are in litigation the probable int. and costs are asked that will accrue up to the termination of the same.

Filed the 17th day of April, 1848.

J. C. ARMSTRONG, *Clk.*

Order of Court.

Panola probate court, April term, 1848.

MONDAY MORNING, *April 17th, A. D.* 1848.

In the matter of the estate of William Jolly, deceased.

Upon reading and filing the petition of John H. Keith and M. J. Vaiden, administrators of the goods and chattels, rights and credits, which were of William Jolly, deceased, this day preferred, representing and declaring the estate, both real and personal, of said intestate insolvent and insufficient to pay the claims exhibited against the estate of said intestate; and the court being satisfied, from the proofs and exhibits, that said estate is insolvent and insufficient to pay said debts:

It is therefore ordered by the court, that James C. Armstrong, clerk of this court, be, and he is hereby, appointed commissioner, with full power to receive and examine all claims of the several creditors of said estate, and that said commissioner shall, and he is hereby directed, to cause a notice to be posted on the door of the court-house of Panola county, and published in the Mississippi Lynx, a newspaper printed and published in the town of Panola, for the space of twelve months, notifying the creditors of said intestate to file their claims with him duly probated according to law, by the third Monday in April, 1849, at the expiration of which time, the said commissioner is hereby directed and required to make his report, and to present, on oath, a list of all the claims that shall have been laid before him, with the sum which he shall allow on each respective claim.

Order of Court.

Panola probate court, May term, 1849.

TUESDAY MORNING, *May 22nd*, 1849.

In the matter of the estate of William Jolly, deceased.

James C. Armstrong, clerk of this court, this day made a report of all the claims filed with him against the estate of William Jolly, deceased.

It is thereupon ordered by the court that publication be made in the Mississippi Lynx, a newspaper printed and published in the town of Panola, in this State, for four successive weeks, warning all the creditors and other persons interested in the estate of William Jolly, deceased, to be and appear in said court on the third Monday in July next, to show cause why said report should not be allowed.

Exceptions to Report.

Exceptions taken by John H. Keith and Micajah J. Vaiden, administrators of the estate of William Jolly, deceased, to the report of James C. Armstrong, commissioner of insolvency on said estate, made at May term of the probate court, 1849.

1st. For that the said commissioner has in his report allowed Claiborne Buckner the sum of $553 96, as pr. acc. filed, marked No. 51, whereas said sum ought not to have been allowed, on the ground that said claim against said estate was not probated according to law, and there was not produced to said commissioner any proof to establish said claim and authorize him to report it for allowance, and that said claim is barred by the statute of limitations.

2nd. For that the said commissioner has, in his report, allowed John Edge the sum of $599 63, and interest to the 15th of May, 1849, as pr. acc. filed, No. 50, whereas said claim ought not to have been allowed, on the ground that said claim was not probated according to law, and also on the ground that an action at law on said claim has been tried and determined in the circuit court of Panola county against the said Edge, and in favor of complainants as administrators of said

estate of William Jolly, deceased, and that said claim is barred by the statute of limitations.

Wherefore, the said administrators do except to said report, and appeal therefrom to the judgment of the court.

S. B. McKEE,
Sol. for complts.

Filed the 16th day of July, 1849.

J. C. ARMSTRONG, *Clk.*

Order of Court.

Probate court, July term, 1849.

MONDAY MORNING, *July* 16, 1849.

In the matter of the estate of William Jolly, deceased.

Ordered by the court that the hearing of the exceptions filed to the report of J. C. Armstrong, of the claims against the estate of William Jolly, deceased, be continued until the next term of this court.

Order of Court.

Panola probate court, August term, 1849.

TUESDAY MORNING, *August* 21, 1849.

In the matter of the estate of William Jolly, deceased.

Ordered by the court that the trial of the exceptions to the report of James C. Armstrong, clerk of this court, be continued until the next term of this court.

Order of Court.

Probate court, September term, A. D. 1849.

MONDAY MORNING, *September 17th*, 1849.

In the matter of the estate of William Jolly, deceased.

The trial of the exceptions to the report of James C. Armstrong, clerk, &c., is continued by consent.

Order of Court.

Panola probate court, October term, 1849.

MONDAY MORNING, *October the 15th*, 1849.

JOHN H. KEITH, AND M. J. VAIDEN, administrators of the estate of William Jolly, deceased,
vs.
CLAIBORN BUCKNER et al.

In the matter of the report of James C. Armstrong, clerk of the probate court, and ex-officio commissioner of insolvency in said estate, &c.

This cause coming on to be heard upon exceptions taken by the said administrators to the report made in this cause by James C. Armstrong,

clerk of the probate court, and ex-officio commissioner of insolvency on said estate, appointed by a decretal order of this court to receive and report claims against the said estate of William Jolly, deceased, bearing date the 17th day of April, 1848, and which said report bears date the 21st day of May, 1849; and the subject-matter of the said exceptions having been argued and debated by counsel, it is ordered, adjudged, and decreed, and his honor, the judge of probates, doth this day order, adjudge, and decree, that the exceptions of the said administrators, about the claim of Claiborn Buckner, marked in said report as voucher No. 51, for the sum of $553 96, be allowed; and, it appearing to the satisfaction of this court that the said commissioner has reported a claim in favor of John Edge, for the sum of $599 63, and interest to May 15, 1849, marked in said report as voucher No. 50, and that suit is pending on said claim in favor of the said John Edge against the said administrators, the court doth therefore order, adjudge, and decree, that the exception of said administrators, in relation to said claim, be continued until said suit is determined, and that in all other matters the said report be confirmed. And it is further ordered and decreed, that said commissioner alter and correct said report, by striking out the said claim, marked as voucher No. 51, in favor of Claiborn Buckner, for the sum of $553 96, and adjust said report accordingly. Ordered, adjudged, and decreed, this 16th day of October, 1849.

J. T. M. BURBRIDGE, [SEAL.]

In the matter of the report of the commissioner of insolvency on the estate of William Jolly, deceased.

The commissioner appointed by this court at the April term, 1848, thereof, to receive and examine the claims of the several creditors of the estate of William Jolly, deceased, having brought in and filed his report at the May term, 1849, and John H. Keith and M. J. Vaiden, administrators of said estate, having appeared and filed *his* exceptions; and at this term of the probate court, this court, having heard said exceptions and the argument of counsel thereupon, having referred said report back to the said commissioner to report thereon, according to the directions of the court made in a decretal order of this court at this term thereof:

And at this term the said report amended and altered according to the directions of this court—it is ordered, adjudged and decreed that said altered report be in all things affirmed, approved, and ordered to be recorded.

It is further ordered by the court, that John H. Keith and Micajah J. Vaiden, administrators of said estate, be cited to be and appear before this court at the next term thereof, then and there to exhibit an account of assets in *his* hands subject to, and ready for distribution among said creditors. To which two last-mentioned orders and judgments of the court sustaining said exceptions to said claim of Claiborn Buckner, and ordering the same to be stricken out of the report of said commissioner, and confirming said report after the same was amended, the said Buckner, by his attorney, excepts, and tenders his bill of ex-

ceptions at the time in open court, which he prayed may be signed, sealed and made a part of the record, which is accordingly done.

Report of Commissioner of Insolvency.

Exhibit "B."

Commissioner's Notice.

The undersigned, appointed by the probate court of Panola county, Mississippi, at the April term, A. D. 1848, commissioner to receive and examine all claims of the several creditors of the estate of William Jolly, deceased, represented insolvent: All persons holding claims against said decedent are hereby notified to file the same with the undersigned, duly probated according to law, on or before the third Monday in April, A. D. 1849.

J. C. ARMSTRONG, *Commissioner.*

April 22nd, 1848. 4—12th.

THE STATE OF MISSISSIPPI,
Panola county, ss:

Before me, James C. Armstrong, clerk of the said probate court of said county, personally appeared F. Y. Rockett, the proprietor of a public newspaper, printed and published in the town of Panola, in said county and State, called the Mississippi Lynx, who, being duly sworn, did depose and say, that publication of the notice hereto affixed has been made in the said newspaper for twelve months, weekly; said publication commencing on the 22d day of April, 1848, and ending on the 28th day of April, 1849.

F. Y. ROCKETT.

Sworn to and subscribed before me, the 12th day of May, 1849.

J. C. ARMSTRONG, *Clerk.*

THE STATE OF MISSISSIPPI,
Panola county:

Before me, J. T. M. Burbridge, judge of the probate court of said county, personally appeared James C. Armstrong, who, being first duly sworn, did depose and say, that on the 22d day of April, 1848, he posted an advertisement, of which the annexed printed notice is a true copy, on the *the* door of the court-house in the town of Panola.

J. C. ARMSTRONG.

Sworn to and subscribed before me, the 12th day of May, 1849.

J. T. M. BURBRIDGE,
Judge of Probate.

THE STATE OF MISSISSIPPI,
Panola county, ss:

All creditors, and other persons interested in the estate of William Jolly, deceased, are cited to be and appear before the probate court of

Panola county, at the court-house thereof, on the third Monday in July next, and to show cause, if any they can, why the report of James C. Armstrong, clerk of the probate court, and commissioner of insolvency ex officio on the estate of said decedent, made at the May term, 1849, of the probate court, should not be allowed.

Witness the honorable J. T. M. Burbridge, judge of probate of Panola county, the third Monday of May, A. D. 1849. Issued the 23d day of May, 1849.

JAMES C. ARMSTRONG, *Clerk.*

May 26th, 1849.—6, 4 w.

THE STATE OF MISSISSIPPI,
Panola county, ss:

Before me, James C. Armstrong, clerk of the probate court of said county, personally appeared F. Y. Rockett, the proprietor of a public newspaper, printed and published in the town of Panola, in said county, called the Mississippi Lynx, who, being duly sworn, did depose and say, that publication of the notice hereto annexed has been made in said newspaper for four successive weeks, to wit:

In No. 6, dated the 26 day of May, A. D. 1849.
In No. 7, dated the 2 day of June, " "
In No. 8, dated the 9 day of " " "
In No. 9, dated the 16 day of " " "
In No. 10, dated the 23 day of " " "

Said publication beginning on the 26 day of May, and ending on the 23 day June, A. D. 1849.

F. Y. ROCKETT.

Sworn to and subscribed before me, the 12 day of July, 1849.

J. C. ARMSTRONG, *Clerk.*

THE STATE OF MISSISSIPPI,
Panola county:

I, James C. Armstrong, clerk of the probate court of said county, do hereby certify that the several numbers of the paper containing the publication hereto annexed have been produced before me, and compared with said copy, and that I have found the same and the proof to be truly and correctly made.

J. C. ARMSTRONG, *Clerk.*

EXHIBIT A.—*A list of all the claims which have been filed with the undersigned, clerk of the probate court of Panola county, against the estate of William Jolly, deceased, with the amount of interest on each claim up to the 1st day of May*, 1849.

No.	Name of claimant.	Nature of claim.	Amount of claim.	Am't of claim and cost.	Interest.	Total amount.
1	J. Cook	Account.	$60 16½	$61 16	$24 02	$85 18
2	Mrs. Gee	Note	857 39	859 76	224 96	1,082 72
3	Wm. McDonald	Account.	442 40	442 90	64 02	506 92
4	B. H. Copeland	"	88 60	89 60	7 08	96 68
5	W. H. Johnson	"	13 87	14 75	2 13	16 88
6	Robert J. Nickle	"	10 12½	11 00	0 80	11 80
7	James Jolly	"	288 00	289 00	116 80	405 80
8	J. H. Matthews	"	38 00	39 00	5 32	44 32
9	Do.	"	115 36	116 36	16 10	132 46
10	A. J. Tucker	"	14 00	14 87	1 12	15 99
11	Joseph Lane	"	27 69	28 56	8 87	37 43
12	Mary A. Neely	"	92 00	93 00	7 49	100 49
13	J. T. Brown	"	6 00	6 87	2 28	9 15
14	Z. Conkey	Note	7 12	8 00	2 10	10 10
15	C. T. Jolly	Account.	65 00	65 50	5 20	70 50
16	J. P. M. Davis	"	3 18	3 53	0 23	3 78
17	W. H. Williams	"	17 75	18 17	1 30	19 42
18	J. T. Davidson	"	25 00	32 47	7 90	40 37
19	Davidson & Isom	"	30 00	31 87½	2 25	34 12
20	Martha Roberts	"	75 00	75 37½	58 50	133 87
21	R. R. Howard	"	663 18	663 18	127 59	790 75
22	S. C. Kinney	"	24 25	24 62½	6 18	30 80
23	Butts & Foster	"	5 14	5 51	0 75	6 26
24	S. B. McKee	Note	50 00	50 37½	6 75	57 12
25	H. Kendall, Carter & Co.	"	200 50	201 50	51 12	252 62
26	N. G. McKee	"	232 63	233 00	35 82	268 82
27	R. J. Shaw	Account.	17 50	17 87½	8 67	26 54
28	S. B. McKee	"	10 00	10 37½	1 35	11 72
29	Thomas Whitson	Note.	.....	0 37½	7 79	8 16
30	H. Laird & Co.	Account.	8 06	8 44	1 08	9 52
31	Childress & McNamara	"	9 00	9 37	1 22	10 51
32	Childress	"	3 00	3 37½	0 31	3 68
33	Harrison & Vance	Contract.	463 00	464 01	62 23	526 24
34	L. B. Acker	Account.	1 75	2 12½	0 12½	2 25
35	H. T. Pollard	"	8 05	8 92	1 08	10 00
36	D. B. Cappe	"	215 00	216 00	29 03	245 03
37	J. P. M. Davis	"	50 21	51 21	7 40	68 61
40	W. H. Glasscock	Note	49 83	50 70	6 45	57 15
41	A. G. Goodwin	Account.	83 20	84 20	11 34	95 54
42	W. B. Fiser	"	5 00	5 87½	0 37½	6 25
43	W. W. Smith	"	426 55	427 05	82 47	509 52
44	W. C. Culberson	"	6 73	7 60	0 94	8 54
45	B. L. Phillips	Judgment	46 00	47 25	7 61	54 86
46	Thomas B. Stubbs	"	186 00	186 12	27 40	213 42
47	Do.	"	287 88	287 88	44 64	332 52
48	Bryant Jendall	"	340 75	354 39	63 00	417 39
49	James J. Newsom	"	550 70	570 92½	101 75	672 69
50	John Edge	Account.	599 63	Int. to 15th	May, 1849	599 63
51	Claiborn Buckner	"	553 96	"	"	553 96
54	Benjamin T. Bethune	Judgment	568 53	"	"	568 53
55	Charles C. Paine	"	569 83	"	"	569 83
56	Miller	"	570 33	"	"	570 33
57	Lewis Bailey	"	570 33	"	"	570 33
58	Erasmus D.	"	599 63	.....	.....	599 63
59	J. S. Kennedy	Note	35 00	35 37½	4 90	40 27
60	A. W. Armstrong	Account.	64 50	65 05	0 30	65 35

To the honorable John T. M. Burbridge, judge of the probate court of Panola county, State of Mississippi:

The undersigned, clerk of the probate court of said county, having been appointed by this honorable court, at the April term, 1848, thereof, to receive and report claims against the estate of William Jolly, deceased, beg leave respectfully to report, that in pursuance of said order he caused notice to be published and posted in the manner and form prescribed in said order, which will fully appear by reference to the proofs herewith filed, marked B, made a part of this report; and that there has been sixty claims filed with him against said decedent.

The undersigned herewith submits, in conformity to the statute in such case made and provided, as a part of this report, a list of the claims which have been filed with him, with the amount of interest and costs on each claim up to the 1st day of May, 1849, which said list is marked Exhibit "A."

And your said clerk having discharged the duties incumbent on him, and fully reported in this behalf, prays to be discharged, with such compensation as your honor seems fit allow.

Respectfully submitted,
J. C. ARMSTRONG, *Clerk.*

Sworn to and subscribed the 21st day of May, 1849.
J. T. M. BURBRIDGE,
Judge of Probates.

Certificate from high court of errors and appeals.

The State of Mississippi, to the honorable the Probate court of Panola county, greeting:

Be it remembered, that at a term of our high court of errors and appeals, begun and held at the capitol, in the city of Jackson, on the first Monday of November, in the year of our Lord 1851, the following judgment was rendered in the cause therein named, to wit:

CLAIBORN BUCKNER, plaintiff in error,
vs.
JOHN H. KEITH and MICAJAH VAIDEN, administrators of William Jolly, dec'd, defendants in error. } 2981.

This cause having been submitted at a former term of this court, and the same having been duly considered:

It is ordered and adjudged by this court, that the judgment of the probate court of Panola county, rendered in this case on the 16th day of October, A. D. 1849, be, and the same is hereby affirmed; and that the defendants in error aforesaid do have and recover of the plaintiff in error aforesaid their cost in this behalf expended; and that this judgment be entered as of the day of the submission of this cause.

I, Caswell R. Clifton, clerk of said high court of errors and appeals, do hereby certify, that the foregoing judment is truly copied from the minutes of the November term of said court, as the same now remain in my office.

In testimony whereof, I hereto subscribe my name and affix the seal of said court, at office in the city of Jackson, in said State, this 14th day of November, in the year of our Lord 1851.

C. R. CLIFTON, *Clerk.*

THE STATE OF MISSISSIPPI,
Panola county, ss:

I, Wylie P. Wooten, clerk of the probate court of said county, do hereby certify, that this and the preceding pages, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, contain a true and accurate copy of the following papers and proceedings filed and had in said court, in the matter of the insolvency of the estate of William Jolly, late of said county, deceased, to wit: 1st, petition and exhibit A, representing and declaring said estate insolvent; 2d, order of court appointing a commissioner of insolvency, and directing publication to be made, citing creditors to file their claims with commissioner; 3d, order of court directing publication to be made, notifying all creditors, and other persons interested, to appear and contest report of commissioner of insolvency; 4th, the exceptions to report of commissioner of insolvency; 5th, order of court continuing exceptions to report; 6th, order of court continuing exceptions to report; 7th, order of court continuing exceptions to report; 8th, decree of court upon hearing exceptions to report; 9th, the order of court confirming, approving and ordering report to record; 10th, the report and exhibits of the commissioner of insolvency; 11th, certificate of affirmance from high court of errors and appeals;—as fully and completely as the same remains of file and on record in my office. Given under my hand and the seal of said court, at office in Panola, the 21st day of May, 1852.

W. P. WOOTTEN, *Clerk.*

THE STATE OF MISSISSIPPI,
Panola county:

I, Orville Harrison, judge of the probate court of said county, do certify that Wylie P. Wootten, whose genuine signature appears officially to the foregoing certificate and attestation, is now, and was at the time he signed the same, clerk of said court, duly elected, qualified and commissioned, and that all of his acts as such are entitled to full faith and credit.

In testimony whereof, I hereunto set my hand and cause the seal of the said court to be affixed, at Panola, the 21st day of May, 1852.

ORVILLE HARRISON,
Judge of Probates.

Complainants' replication to respondents' answer, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi.

District court at Pontotoc, June term, 1852.

THE PRESIDENT, DIRECTORS AND COMPANY OF THE UNION BANK OF THE STATE OF TENNESSEE,
vs.
MICAJAH J. VAIDEN and JOHN H. KEITH, administrators of William Jolly, deceased.
} No. 41.—In chancery.

And the said complainants, for replication to the answer of the said defendants, filed in this cause, say, that the matters and things stated in their said bill are true; and that the matters and things stated and set forth in said answer, so far as the same denies the allegations in the said bill contained, are untrue and insufficient;—all of which the said complainants are ready to aver, maintain and prove, as this honorable court may direct.

STEARNS, AYRS & DAVIDSON, *Sol's for compl'ts.*

The order to set this cause for final hearing is in the words and figures following, to wit:

THE UNION BANK OF TENNESSEE
vs.
M. J. VAIDEN & J. H. KEITH, Adm'rs of Wm. Jolly, deceased.
} No. 41.

The clerk will place this cause on the issue docket for final hearing on the bill and answer, exhibits filed, and proof.

CLAYTON, WATSON & CRAFT, *for def'ts.*

Dec'r 6th, 1852.

And afterwards, to wit, on the 13th day of December, 1852, being a day of the December term of said court, the following proceedings were had, to wit:

MONDAY, 13*th Dec'r*, 1852.

UNION BANK OF TENN'E,
vs.
VAIDEN & KEITH, Adm'rs.
} No. 41.

This day came on to be heard this cause for final hearing upon bill and answer, and proof, and the same is taken under advisement by the court.

No steps were taken in this cause from the December term, 1852, to the June term, 1854.

The order to set this cause for final hearing is in the words and figures following, to wit:

THE PRESIDENT, DIRECTORS AND COMPANY OF THE UNION BANK OF THE STATE OF TENNESSEE,
vs.
MICAJAH J. VAIDEN and JOHN H. KEITH, Adm'rs of William Jolly, deceased.
} In Chancery.

The clerk will set down this cause for hearing upon bill and answer.

WM. F. STEARNS,
Sol'r for compl'ts.

June 5, 1854.

Afterwards, to wit, on the 6th day of June, 1854, the following proceedings were had, to wit:

TUESDAY, *June 6th*, 1854.

UNION BANK OF TENNESSEE
vs.
VAIDEN & KEITH, adm's, &c.
} 41.

By consent of parties, it is ordered by the court that this cause be continued until the next term of this court.

And afterwards, to wit, on the 4th day of December, 1854, another order to set this cause for hearing was given to the clerk, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
Northern district of Mississippi.
District court, December term, 1854.

THE UNION BANK OF TENNESSEE
vs.
MICAJAH J. VAIDEN and JOHN H. KEITH, adm's, &c.
} No. 41.

The clerk will set this cause down upon the hearing docket for final hearing upon bill, answer, exhibits, vouchers, and proofs.

Monday, 4th December, 1854.

WATSON & CRAFT,
Sol. Pro. for defendants.

A transcript from the probate court of Panola county was filed in this cause on the 13th day of December, 1852, in the words and figures following, to wit:

THE STATE OF MISSISSIPPI,
Panola county:

Be it remembered, that at a term of the probate court of Panola county, State aforesaid, begun and held at the court-house in and for

said county, on the first Monday in September, A. D. 1852, among other orders and decrees then and there made and recorded, was one in the letters, words, figures, and characters following, to wit:

THE STATE OF MISSISSIPPI,
Panola county:

Probate court, September term, A. D. 1852.

TUESDAY MORNING, *September 7th, A. D.* 1852.

WILLIAM G. JOLLY et al.
vs.
J. H. KEITH and M. J. VAIDEN, administrators, et al. } No. 392.

The petition in this case having been taken as confessed by Cynthia T. Jolly, one of the parties defendant thereto, after service of citation upon her, thereupon came the plaintiffs and the said administrators, by their solicitors, and came on to be heard the demurrer of said administrators to that part of the petition of plaintiffs which prays that said administrators be compelled to show what disposition they have made of the money of said estate, and after argument of counsel thereon, it is considered by the court that the same be sustained, and leave given to plaintiffs to amend, which they declined; and thereupon came on for hearing the demurrer of plaintiffs to the answer of said administrators, and argument of counsel being heard, it is considered by the court that said demurrer be sustained as to all matters alleged in said answer, except the lawyer's fees, and the $1,650 paid by said administrators on account of said estate, and as to said matters it is ordered that said demurrer be overruled, and leave is given to defendants to answer over if they think proper, which they decline. And the court hereby orders and directs that $1,350 be retained in the hands of said administrators to meet the payment of said lawyer's fees, and their own commissions to be adjusted and settled hereafter in the final settlement of said estate. And it appearing to the court that more than twelve months have elapsed since the grant of letters of administration on said estate, and that the estate consists of nine thousand and thirty-eight and $\frac{63}{100}$ dollars ($9,038 $\frac{63}{100}$) in money, from which is to be taken the sum of three thousand dollars, ($3,000 00,) retained in the hands of said administrators for lawyer's fees and commissions, and one thousand six hundred and fifty dollars (1,650 00) paid out of said fund, leaving a balance of six thousand thirty-eight and $\frac{63}{100}$ dollars (6,038 $\frac{63}{100}$) in money, in the hands of said administrators, to be distributed among the legal heirs and distributees of said estate. It also appearing that said Cynthia T. Jolly is the widow of said William Jolly, deceased; and that said William G. Jolly and Amanda N. Jolly are heirs at law, of lawful age, of said estate; and that said Martha J. Jolly, Anna E. Jolly, Frances S. Jolly, Robert H. Jolly, and Virginia C. Jolly, are heirs at law, under age, of said estate; and that said William G. Jolly

is the guardian of the said heirs at law, who are under age; and that said heirs at law of lawful age, and the guardian of those who are under age, are willing to execute refunding bonds according to law:

It is thereupon ordered by the court that the said John H. Keith and M. J. Vaiden, administrators as aforesaid, do distribute among and pay over to said heirs at law, or their legal representatives or guardian, in equal shares, the said sum of six thousand and thirty-eight and $\frac{6.3}{100}$ dollars, ($6,038 $\frac{6.3}{100}$,) to wit: the sum of seven hundred and fifty-four dollars and eighty-two and $\frac{67.5}{100}$ cents, being one-eighth of said sum, to Cynthia T. Jolly; the sum of seven hundred and fifty-four dollars and eighty-two and $\frac{87.5}{100}$ cents to Amanda N. Jolly, being one-eighth of said sum; the sum of seven hundred and fifty-four dollars and eighty-two and $\frac{87.5}{100}$ cents to William G. Jolly, being one-eighth of said sum; and the sum of three thousand seven hundred and seventy-four dollars and twelve and $\frac{5.0}{100}$ cents to William G. Jolly, guardian of Martha J. Jolly, Anna E. Jolly, Frances S. Jolly, Robert H. Jolly, and Virginia C. Jolly, minor heirs of said intestate, being five-eighths of said sum; requiring from said heirs of lawful age, and from the guardian of those who are under age, bonds, conditioned that if said personal estate shall be found charged with any outstanding debts of intestate, or charges legally incurred in settling the estate, the said distributees will refund his, her, or their rateable proportion of the amount necessary for the payment of said debts and charges.

To which orders and decrees of this court, sustaining the demurrer to a portion of defendant's answer, and ordering that the said administrators do distribute among and pay over to said heirs at law the said sum of six thousand and thirty-eight and $\frac{6.3}{100}$ dollars, the said administrators, by their attorney, excepted, and prayed an appeal to the next term of the high court of errors and appeals, to be held in the city of Jackson, on the 3d Monday in October next, which is granted; the defendants having entered into bond and security in open court; which bond and security was approved in open court.

THE STATE OF MISSISSIPPI,
Panola county.

I, the undersigned Wylie P. Wootten, clerk of the probate court of said county, do hereby certify, that the foregoing four pages contain a true and perfect transcript of the original decree in the cause therein stated, as fully and completely as the same remains of record in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said court, at office in Panola, the 3d day of December, A. D. 1852.

W. P. WOOTTEN, *Clerk.*

Complainants' exceptions to the foregoing transcript, in the words and figures following, to wit:

The complainants, by their solicitors, except to the reading of the within transcript, because the same is not pertinent to any issue presented in the pleadings in the cause.

WM. F. STEARNS,
Sol. for complainants.

And afterwards, to wit, on the 7th day of December, A. D. 1854, a decree was rendered by the court in this cause, in the words and figures following, to wit:

THE UNION BANK OF TENNESSEE
vs.
MICAJAH J. VAIDEN and JOHN H. KEITH, administrators of William Jolly, deceased.

This cause came on this day to be heard on the bill and answer, exhibits filed and proof, and was argued by counsel; and it appearing to the court that the complainant, the said Union Bank of Tennessee, is not entitled to the relief sought by the bill in this case, it is therefore adjudged, ordered, and decreed, that the said bill be, and is hereby, dismissed, and that the defendants do recover of the said complainant their cost in this behalf expended; for which execution may issue as at law.

December 7th, 1854. S. J. GHOLSON.

And afterwards, to wit, on the 26th day of February, A. D. 1855, complainants in this cause filed their bond for an appeal to the Supreme Court, in the words and figures, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, sct.

Know all men by these presents, that we, the President, Directors and Company of the Union Bank of the State of Tennessee, F. W. Smith and Wm. F. Stearns, are held and firmly bound unto Micajah J. Vaiden and John H. Keith, administrators of William Jolly, deceased, in the just and full sum of five hundred dollars, lawful money of the United States, to be paid to the said Vaiden and Keith, administrators as aforesaid, their lawful attorney, executors, administrators or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated nineteenth day of December, A. D. one thousand eight hundred and fifty-four.

The condition of the above obligation is such, that whereas, at a term of the district court of the United States for the northern district of Mississippi, commenced and held at the town of Pontotoc on the first Monday of December, A. D. 1854, a decree was rendered by said court in

favor of the said Vaiden and Keith, administrators as aforesaid, against the said President Directors and Company, upon a bill filed by said President, Directors and Company, on the equity side of said court for the costs of suit, and the said President, Directors and Company have sued out an appeal to the Supreme Court of the United States to reverse said decree:

Now, if the said President, Directors and Company shall prosecute their said appeal to effect, and shall well and truly pay and satisfy the amount of said decree, and all such damages, interest and costs as the said Supreme Court of the United States shall adjudge in the premises, if they, the said President, Directors and Company, shall fail to make their plea good, then, and in that case, this obligation to be void, otherwise to remain in full force and virtue.

The President, Directors and Company of the Union Bank of the State of Tennessee,

By W. P. BRYAN, [SEAL.]
Their attorney in fact.

F. W. SMITH, [SEAL.]
WM. F. STEARNS, [SEAL.]

I approve of the within and foregoing bond and securities. Given under my hand this the 26th day of Febr'y, A. D. 1855.

S. J. GHOLSON,
Judge U. S. D. C. for Missi.

Filed, and citation issued, Feb'y 26, 1855.

R. W. EDMONDSON, *Clk.*

THE UNITED STATES OF AMERICA,
Northern district of Mississippi.

I, Robert W. Edmondson, clerk of the district court of the United States for said district, certify the foregoing forty-four pages contain a true and correct transcript of the original papers and proceedings filed and had in the cause therein stated, as fully and completely as the same remain of record and on file in my office; and also of the appeal bond filed in said cause, with the judge's approval thereon, and date of filing in my office.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, at office in Pontotoc, this the 10th day of April, 1855. R. W. EDMONDSON, *Clerk.*

Citation.

UNITED STATES OF AMERICA, *ss:*

To Micajah J. Vaiden and John H. Keith, administrators of all and singular the goods and chattels, rights and credits, which were of William Jolly, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first

Monday of December next, (1855,) pursuant to an appeal filed in the clerk's office of the district court of the United States for the northern district of Mississippi, wherein the President, Directors and Company of the Union Bank of the State of Tennessee are appellants, and you are appellees, to show cause, if any there be, why the decree, in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States for the northern and southern districts of Mississippi, (with the jurisdiction of circuit judge in the said northern district,) this 26th day of February, in the year of our Lord 1855.

S. J. GHOLSON,
Judge U. S. D. C. for Miss.

Came to hand April 10th, and executed April 17th, 1855.

CHAS. R. JORDAN,
Marshal no. dist. of Miss.

By J. Q. RAYBURN,
D'pty marshal.